

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 8, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3213

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALLAN D. SCHOPPER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
HAROLD V. FROEHLICH, Judge. *Affirmed.*

MYSE, J. Allan D. Schopper appeals an order finding that his refusal to submit to a blood alcohol test was unreasonable. Schopper contends that the refusal hearing was untimely and in violation of his constitutional right to a speedy trial, that the trial court improperly refused to grant his requested discovery, including the sheriff's department's 911 tapes covering the evening of his arrest, and appears to argue that his conviction of operating while under the

influence was erroneous. Because this court concludes that the right to a speedy trial does not apply to administrative hearings governing refusals to submit to blood alcohol tests, that the availability of the 911 tapes to Schopper was subject to a separate appeal already resolved and Schopper's conviction for operating a motor vehicle while under the influence of alcohol is a separate action that must be separately appealed, the order finding his refusal to be unreasonable is affirmed.

Allan Schopper alleges a series of complaints concerning the processing of his operating a motor vehicle while under the influence of an intoxicant charge and a related administrative hearing on his refusal to submit to blood alcohol tests. In his pro se brief, Schopper alleges a series of improprieties and allegations of unfairness in these proceedings but fails to develop these arguments with sufficient specificity that they can be addressed by this court. Accordingly, this court limits its consideration to the issues it can identify in Schopper's brief.

Schopper was arrested on November 29, 1995, for operating a motor vehicle while under the influence of alcohol. Because Schopper refused to submit to blood alcohol tests, a notice of intent to revoke operating privileges based on this refusal was served on November 30, 1995. A refusal hearing was requested and originally scheduled for February 2, 1996, but then postponed and ultimately commenced on March 29. At this hearing, officers Gregory Goodavish and Fred Laitinen gave testimony and were cross-examined. Before Schopper was able to present his evidence as to the reasonableness of his refusal, however, the court was required to continue the matter to another date based upon exigency of the court's calendar. The hearing was continued to May 31, but was subsequently rescheduled based upon Schopper's first attorney's request to withdraw as his counsel. On March 29, a second attorney was appointed for Schopper through the

public defender's office. At the May 31 refusal hearing, however, counsel requested leave to withdraw and, with Schopper's consent, counsel's withdrawal was approved by the court. The matter was then rescheduled to July 12. A third attorney was appointed on June 27 and the refusal hearing ultimately was continued on September 27. The hearing was held before the court commissioner who concluded that the refusal was unreasonable. Schopper made a request for a de novo review before the circuit court and a hearing was scheduled for October 28, 1996. At the hearing, the court ruled that Schopper's refusal was unreasonable and entered an order affirming the administrative revocation of his license.

Schopper first argues that a refusal hearing ultimately held almost one year after his initial arrest is a denial of his constitutional right to a speedy trial under the Wisconsin Constitution and § 971.10, STATS. The right to speedy trial, however, is limited to criminal matters. WISCONSIN CONST. art. I, § 7. Article I, § 7 expressly states: "In all criminal prosecutions the accused shall enjoy the right to ... a speedy public trial." The administrative hearing on the reasonableness of Schopper's refusal to submit to a blood alcohol test is not a criminal proceeding. *See* §§ 343.305(9) and (10), STATS. The record shows the administrative hearing requested by Schopper was postponed on numerous occasions in part, at least, due to Schopper's numerous changes of counsel and the request for a de novo hearing before the circuit court. The elapsed time, however, is not subject to challenge based upon speedy trial rights because such rights only attend criminal matters. WISCONSIN CONST. art. I, § 7. Without attempting to assess the reasons for the delay or their reasonableness, this court concludes that Schopper enjoys no right to a speedy trial hearing on administrative determinations regarding the reasonableness of his refusal to submit to blood alcohol tests. Accordingly,

Schopper's claim of a constitutional violation because of the delay in scheduling the administrative hearing is without merit.

Schopper also contends that he was denied appropriate discovery including the release of the 911 tape covering the evening of his arrest. While his claim to rights of discovery may be more extensive than the 911 tape, the brief is so unfocused it is difficult to determine whether any other claims are included within his discovery challenge based upon denial of appropriate discovery. Reference was made to the availability of the officers at the rescheduled hearing, but it appears that ultimately the officers were presented by the State at the rescheduled hearing for use by Schopper in his presentation concerning the reasonableness of his refusal. The discoverability of the 911 tape was addressed in *Schopper v. Gehring*, No. 96-2782 (Wis. Ct. App. April 15, 1997, ordered published May 27, 1997). Because that issue was addressed in an independent appeal, this court need not address the merits of that contention again in this matter.

It appears that Schopper is also attempting to reach the merits of his conviction for the offense charged. An appeal from that conviction must be separately filed and consists of a separate and independent judgment that may not be reached by this court based upon an appeal from the results of a refusal hearing. Section 809.10, STATS. This matter therefore cannot be determined as a part of this appeal.

Schopper does raise serious problems with the delay and frequent postponement of his refusal hearing. For example, several witnesses were subpoenaed by him who attended various hearings but whose testimony was not submitted because of limitations of time and adjournments required for a variety

of other reasons, some of which are attributable to Schopper himself. This court does not mean to trivialize the difficulty a lay person has in presenting evidence and the expense and inconvenience attendant to an extended number of continuances that may be required in a specific matter. These complaints, however, are not a basis upon which Schopper may claim reversible error. The two officers were ultimately presented by the State for Schopper's use at the hearing, albeit one which was postponed. Schopper's witnesses, including one from the telephone company, were ultimately ruled not to be relevant to the merits of the refusal hearing then being entertained by the court. Because Schopper does not identify the witnesses or the expected testimony to be elicited from them, this court cannot reach the merits of any claim that it was error not to receive the evidence from these witnesses.

Because the right to a speedy trial does not apply to a refusal hearing, this court concludes that Schopper's right to speedy trial was not violated. This court also concludes that Schopper's contention that discovery was wrongly withheld was addressed in an early appeal and that his other contentions are not sufficiently developed to be addressed. This court, therefore, affirms the order.

By the Court.—Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

